STATE OF MICHIGAN

COURT OF APPEALS

JOHN VERDICHIZZI,

Plaintiff-Appellant,

v

WRIGHT & FILIPPIS, INC., DARYL SULLIVAN, KAREN KIMBERLY, TIM HATT, and TOM HOPKINS,

Defendants-Appellees.

UNPUBLISHED
November 10, 2005

No. 261680
Oakland Circuit Court
LC No. 2004-060697-NO

Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants. We affirm.

Plaintiff first argues that the language of the application for employment with Wright and Filippis was unenforceable and that the shortened statute of limitations period effectively prevented him from bringing his cause of action. We disagree.

A motion for summary disposition pursuant to MCR 2.116(C)(7) is appropriate where "the claim is barred because of . . . statute of limitations." MCR 2.116(C)(7). Where no factual or legal disputes exist and reasonable minds cannot differ on the law regarding the facts, the decision regarding whether a plaintiff's claim is barred by the statute of limitations is a question of law that this Court reviews de novo. *Geralds v Munson Healthcare*, 259 Mich App 225, 230; 673 NW2d 792 (2003). The interpretation of contractual language is an issue of law that is reviewed de novo on appeal. *Morley v Auto Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

Plaintiff argues that the nine-point font made the statement limiting the statute of limitations difficult to read and minimized its importance. "Written contracts are not to be held void merely because of detail or complexity of their content, or because of the type, or form of composition in which they are printed." *H H King Flour Mills Co v Bay City Baking Co*, 240 Mich 79, 83; 214 NW 973 (1927). Further, the size of the font was the same as the rest of the employment application, and the statement about the statute of limitations was in bold and capitalized, and located directly above the signature line. Therefore, plaintiff's argument regarding font size is without merit.

Further, plaintiff argues that the language used in the application binds only plaintiff and that there was inadequate consideration from Wright and Filippis. The relevant portion of the employment application states:

> In consideration of Wright & Filippis' review of my application, **I agree that any claim, action or lawsuit arising out of my employment with, or my application for employment with, Wright & Filippis or any of its subsidiaries, including, but not limited to, claims arising under any State or Federal civil rights statutes, must be brought within six (6) months of the event or employment action that is the subject of the claim, action or lawsuit**. While I understand that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, I agree to be bound by the six (6) month period of limitations set forth herein, and **I WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.**
>
> DO NOT SIGN UNTIL YOU HAVE READ THE ABOVE APPLICANT STATEMENT.

Based on the express terms of the application, the consideration for the applicant waiving the statute of limitations in favor of Wright and Filippis' six-month statute of limitations is Wright and Filippis' consideration of the application. Plaintiff alleges that the consideration ended with his hiring because the application remains current for only thirty days if the applicant was not hired. This argument was rejected in *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 244; 625 NW2d 101 (2001). The terms of an employment application constitute part of the employee and employer's contract of employment because the employer provides consideration to support enforcement of the terms of the application by providing employment and wages. See *Timko, supra*. Therefore, the statute of limitations provision was enforceable against plaintiff during the application period and after he was hired.

Plaintiff next argues that the trial court erred in failing to rule that the six-month limitation period is unreasonable. "Judicial determinations of 'reasonableness' are an invalid basis upon which to refuse to enforce unambiguous contractual provisions." *Rory v Continental Ins Co*, 473 Mich 457, 491; 703 NW2d 23 (2005).[1] Accordingly, this claim of error is without merit.[2]

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[1] Although the *Rory* Court addressed contractual language found in an insurance policy, this Court recently applied the *Rory* principles to an employment agreement in *Clark v DaimlerChrysler Corp*, ___ Mich App ___; ___ NW2d ___ (2005) (Docket No. 252765) slip op p 2.

[2] We note that plaintiff alleged that his cause of action was abrogated because the shortened time period expired before he had the opportunity to investigate and file an action. Although plaintiff alleged that he did not know the reason for his discharge until his unemployment hearing was completed, documentation completed to protest his denial of benefits indicated the contrary. Moreover, plaintiff was sent documentation the day after termination indicating that he was

(continued…)

Plaintiff next argues that if the defamation[3] occurred, it would not have been within the scope of his employment and therefore the language of the statute of limitations would not apply. We disagree. The language in question on the employment application reads, "I agree that any claim, action or lawsuit arising out of my employment with, or my application for employment with, Wright & Filippis. . . ."

> Well-settled principles of contract interpretation require one to first look to a contract's plain language. If the plain language is clear, there can be only one reasonable interpretation of its meaning and, therefore, only one meaning the parties could reasonably expect to apply. If the language is ambiguous, longstanding principles of contract law require that the ambiguous provision be construed against the drafter. [*Singer v American States Ins*, 245 Mich App 370, 381 n 8; 631 NW2d 34 (2002).]

Here, the clear language of the contract provision does not indicate that the claim must arise out of actions within the scope of employment, but rather, the claim must arise out of plaintiff's employment with Wright. Here, the disputed statements were directed at the company in the workplace during business hours, the statements were reported to management at Wright by a concerned employee in accordance with company policy, and plaintiff's employment was terminated as a result of those statements. Based on the plain contract language, the claim arises out of plaintiff's employment with Wright. *Singer*, *supra*.[4]

Affirmed.

/s/ Karen M. Fort Hood
/s/ Helene N. White
/s/ Peter D. O'Connell

(…continued)

terminated because of threatening statements made to co-workers. Under the circumstances, plaintiff failed to establish that he did not have adequate time to investigate his claims and file within the six-month contractual period.

[3] Plaintiff also alleged that the contract period abrogated his cause of action because he did not have ample opportunity to investigate his claim and the claim did not accrue until the unemployment hearing was completed. This contention is without merit. A defamation claim accrues at the time of publication, regardless of whether the defamed individual is aware of the publication. *Hawkins v Justin*, 109 Mich App 743, 746; 311 NW2d 465 (1981).

[4] While plaintiff made additional arguments at oral argument, they were not raised or argued as issues in his brief, and we therefore do not address them.